IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

DANIEL BRYCE HURLBUT PLAINTIFF

v. Civil No.: 6:18-CV-06016

DR. CHARLES LIGGETT, *et. al.* DEFENDANTS

ORDER

Plaintiff proceeds in this matter *pro se* and *in forma pauperis* pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's Motion for Leave to Appeal *in forma pauperis* ("IFP") (ECF No. 31) and Defendants' Motion to Stay (ECF No. 32).

I. BACKGROUND

Plaintiff filed a Notice of Appeal (ECF No. 28) concerning an Order entered by the Court on October 25, 2018. (ECF No. 25). This Order denied Plaintiff's Motion to Compel (ECF No. 18), Motion for Extension of Time to Complete Discovery (ECF No. 24), Motion for Leave to Propound 75 Interrogatories and Motion to Compel Production of Medical Documents (ECF No. 25), and Motion to Take Written Deposition of Witnesses and to Appoint an Expert Witness. (ECF No. 26). Plaintiff filed a Motion to Appeal IFP on November 29, 2018. (ECF No. 31).

On December 3, 2018, Defendants filed a Motion to Stay this case pending the Eighth Circuit's decision on Plaintiff's appeal. (ECF No. 32).

II. LEGAL STANDARD

Title 28 U.S.C. § 1915 governs applications for leave to appeal in forma pauperis. Title 28 U.S.C. § 1915(a)(1) provides:

> ". . . any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits an

> affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress."

Section 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." "Good faith," within the meaning of the statute, must be judged by an objective and not subjective standard, and a litigant's good faith is demonstrated when he seeks appellate review of any issue that is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 921, 8 L.Ed.2d 21 (1962).

III. ANALYSIS

The jurisdiction of an appellate court such as the Eighth Circuit is, "with few exceptions ... limited to 'final decisions' of the district court." *Tenkku v. Normandy Bank*, 218 F.3d 926, 927 (8th Cir. 2000); *see also* 28 U.S.C.A. § 1291. "[A] decision is not final, ordinarily, unless it ends the litigation on the merits and leaves nothing for the [district] court to do but execute the judgment." *Cunningham v. Hamilton County,* 527 U.S. 198, 204, (1999). Pretrial discovery orders are not immediately appealable final orders because "they can be effectively reviewed after final judgment." *Tenkhu*, 218 F.3d at 927.

Here, Plaintiff is attempting to appeal an Order denying his pretrial discovery motions. As this is not an immediately appealable final order, the Eighth Circuit does not have jurisdiction to review the Order. As such, Plaintiff's appeal is not taken in good faith. Furthermore, the appealability of that Order is not in doubt, so contrary to the arguments in Defendants' Motion to Stay, there is no need to stay this case while the Court of Appeals resolves whether it has jurisdiction. *See Missouri ex rel. Nixon v. Coeur D'Alene Tribe*, 164 F.3d 1102, 1106–7 (8th Cir. 1999) (explaining frivolous appeals do not divest a district court of jurisdiction, and the district court should stay only if appellate jurisdiction is in doubt).

IT IS THEREFORE ORDERED that Plaintiff's Motion to Appeal IFP (ECF No. 31) and Defendants' Motion to Stay (ECF No. 32) are DENIED.

IT IS SO ORDERED this 28th day of December 2018.

/s/ P. K. Holmes, III

P. K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE